

From: Fisher, Mike

Sent: Thursday, January 9, 2014 2:45 PM

To: Brent Cole

Cc: Karin Gustafson; joe.darnell@sol.doi.gov

Subject: Supplemental Information Regarding Fortymile River CWA Criminal Investigative Work

Good morning, Brent –

Following up on our conversation Monday, I am providing the information below. It further responds to your questions about potential knowing Clean Water Act violations from Alaska placer mining generally and placer mining in the Fortymile District in particular, which the Task Force members considered prior to (a) their February 2013 meetings on the Fortymile River Initiative and (b) their field investigations in the Fortymile Mining District during the week of August 19th. (After consulting with the U.S. Attorney's Office, we decided it was preferable to provide information in this summary form, rather than providing you with redacted copies of sensitive federal law enforcement records which are relevant to open criminal investigations.)

I appreciate your agreement to treat this information as confidential (as per your agreement with the State Attorney General's Office regarding their documents).

This summary supplements the six bullets listed on page 3 of the "Report on Fortymile River Enforcement Initiative" (December 6, 2013) that was previously provided to you, but does not reflect every conversation or meeting between regulators and the investigators during the time periods discussed above. I have included a brief description of the type of data observed during the August 1 and week of August 18th, 2013 over-flights; as discussed, those over-flights observed, in some cases, apparent or possible discharges indicating a potential permit violation needing further investigation. I have omitted law enforcement intelligence related to non-environmental criminal conduct or criminal histories associated with mine operators collected by the investigators.

Alaska Placer Mining Examples Outside the Fortymile District

- In late 2011, our CID office opened a lead based on a citizen complaint regarding an Alaskan placer mine said to be violating the CWA. After preliminary investigation, this matter was referred to ADEC for potential civil enforcement.
- In January 2012, our CID office opened a criminal investigation of an Alaskan placer mine for knowing violations of its CWA permit. A federal search warrant was executed later that year, and we are pursuing the investigation in conjunction with the Department of Justice.
- In March 2012, our CID office opened a lead based on information regarding an Alaskan placer mine said to be violating the CWA. After preliminary investigation, this lead was closed as unfounded.
- On August 7, 2013, our CID office opened an investigation of an Alaskan placer mine for criminal violations of its CWA permit, based on information from state agency personnel. As we discussed Monday, this case has been charged by the State.

Fortymile District Information Considered by the Task-Force Pre-February 2013

- In a December 2012 meeting, the US Army Corps of Engineers (Army Corps) identified the Fortymile Mining District to Task Force members as an “area of concern.”
- In December 2012, the Army Corps advised that a mine site with a prior NOV for turbidity violations now had disturbances above the bonded acreage and was out of compliance. The Army Corps stated that they observed disturbances at the mine that were discharging reddish silt into Walker Fork. A mine operator associated with this site had been banned from further mining activity in Alaska.

Documentary Materials Re the Fortymile District Collected Prior to Investigative Fieldwork

- A 2010 BLM mine inspection report described discharge violations of material pushed into the Fortymile River during mining operations.
- A 2011 BLM mining inspection report described settling ponds at a mine site as non-functioning and discussed evidence of discharge from the operation, which was not permitted to discharge. BLM mining site inspection photographs of the same site show evidence of a previous discharge of turbid water into Jack Wade Creek.
- A 2011 Alaska DNR Field Inspection and Follow-up Report for a claim site documented disturbances of approximately 21 acres and reported a discharge into Walker Fork through a pipe from a settling pond.
- In 2012 BLM’s Office of Law Enforcement and Security received water quality violation reports related to a claim on Harrison Creek that had been referred to Alaska DEC (which reportedly had not been followed up on).
- In 2012 BLM reports documented: (1) non-compliance from a new trail eroding sediment into Walker Fork and other undocumented disturbances not identified in the mine plan; (2) an inspection that identified "muddy water entering Jack Wade Creek from the Operation;" and (3) a Walker Fork map identifying locations where turbid discharges were occurring in the area by mine operations.
- A 2012 Alaska DEC Notice of Violation for turbidity violations.
- In January 2013, the BLM advised a mine operator of compliance issues regarding “mud flows” and “muddy water” streaming down hill into the Walker Fork.
- Beginning in February 2013, Task Force members reviewed literature concerning the effects of placer mining along the Fortymile River, e.g. a U.S. Geological Fact Sheet titled, “Studies of Suction Dredge Gold-Placer Mining Operations Along the Fortymile River, Eastern Alaska” (USGS Fact Sheet FS-154-97, October 1997, <http://pubs.usgs.gov/fs/fs-0154-97/fs-0154-97.pdf>). This fact sheet identifies potential environmental concerns associated with mining activities in the area, including increased turbidity of river water, adverse impact on the overall chemical quality of river water, and potential additions of specific toxic elements, such as arsenic, to the river during mining operations.
- In February 2013 a BLM field officer review identified various apparent knowing CWA violators, including: (1) an operator who pushed 200 yards of Fortymile riparian material into the river; (2)

another operator said to have "lots of dirty water problems;" (3) third party observations of water quality violations during visits in 2010- Feb 2013; (4) an operator said to be a "notorious individual" with state mine violations "spewing dirty water;" (5) reference to "constant/daily water quality violations up and down the entire state stretch" of Walker Fork; and (6) an operator who "may be the worst operator, from a dirty water standpoint, in the Fortymile (Walker Fork)."

- An April 2013 BLM internal document review identified: (1) an operator as a "significant mining violator" in the Fortymile who had received a previous BLM Notice of Non-Compliance; (2) an operator as causing apparent water quality violations by BLM staff in the Walker Fork; (3) a private party complaint of significant riparian zone destruction along the Fortymile River; and (4) observations of water quality violations during visits to a mine operation on 08/10, 09/10, and 10/10.
- In May 2013, Task Force members received an Army Corps list of active mines in Fortymile which included comments related to potential water quality violations.

Aerial Over-flight Information

- The August 1, 2013 high-elevation over-flight identified multiple apparent and/or possible discharges from settling ponds indicating potential permit violations that required ground observations to confirm.
- The August 18-23, 2013 over-flights performed during the ground investigations identified an additional four discharges not identified during the August 1 over flights. Two of these visibly turbid dischargers were observed discharging over multiple days (i.e. three or four consecutive days).

I hope that you find this information useful. If you have any questions, feel free to contact me.

One question for you, related to your comment on Monday that you have approximately a week to submit your report to the Governor's office: would it be possible to send us a courtesy copy of your report, once it's complete?

Thanks much . . .

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